



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Servo Corporation of America--Request for Reconsideration

File: B-246734.2

Date: August 6, 1992

Stephen A. Barre for the protester.
Kathryn M. Burke, Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Reconsideration request of denial of protest against a sole-source procurement for flight termination receivers is denied where request contains no statement of facts or legal grounds warranting reversal but merely restates arguments made by the protester and previously considered by the General Accounting Office.

DECISION

Servo Corporation of America requests reconsideration of our decision in Servo Corp. of Am., B-246734, Mar. 31, 1992, 92-1 CPD ¶ 322, in which we denied its protest of the proposed sole-source award of a contract to Loral-Conic under request for proposals (RFP) No. N00163-92-R-0023, issued by the Naval Avionics Center, Department of the Navy, for 186 Loral-Conic model 551 flight termination receivers (FTR).¹ In its protest, Servo alleged that the RFP's delivery terms were unduly restrictive of competition because they could be met by only Loral-Conic, and were the result of a lack of advance planning by the agency. Servo bases its reconsideration request on the firm's belief that the RFP's allegedly restrictive delivery terms were the "direct result of the lack of agency planning and favoritism for the incumbent's product."

We deny the request for reconsideration.

¹The FTRs are solid state, FM, B-Band command receiver/decoders, provided as government-furnished equipment to be used on the AN/AQM-37C target currently provided by Beech Aircraft Corporation under a separate contract. The FTRs provide command outputs for the destruction of the target in the event a mission is aborted.

BACKGROUND

On September 20, 1991, the Navy synopsisized an initial requirement in the Commerce Business Daily (CBD) for 300 FTRs to be delivered during the base year and for an option of up to 200 additional FTRs. The announcement required the FTR to comply with Naval Air Systems Command Drawing (NASCD) No. 1588AS103 Revision B (Rev. B). Since at the time that the CBD announcement was published the agency considered three firms, including Loral-Conic and the protester, capable of providing the FTRs within the required delivery dates, this was to be a competitive procurement.

The requiring activity subsequently informed the contracting office that NASCD No. 1588AS103 Revision C (Rev. C) specifications for the FTRs had become available and that all future purchases of the FTR should be made under the new Rev. C drawings. On October 17, 1991, the agency published a notice in the CBD informing offerors that the FTRs would be required to comply with the new NASCD No. 1588AS103 Rev. C, instead of Rev. B. The CBD announcement also informed sources that the procurement would be unrestricted; that delivery of first production items was extended from 180 days to 18 months after award; and that 3 option years were added to the base year, calling for up to 240 FTRs each option year.

On November 6, the agency published a CBD announcement canceling the prior September 20 and October 17 CBD notices. Although the Rev. B specifications for the FTRs were modified by Rev. C, the agency still needed a limited number of FTRs under the Rev. B drawings to meet its obligation under the Beech Aircraft contract. Consequently, on November 7, the agency synopsisized a notice of its intention to procure a "final buy" of 170 Loral-Conic Rev. B FTRs to fulfill its immediate requirement until the Rev. C FTRs became available.² The synopsis stated that the agency required first deliveries 90 days after award.³

²On November 19, the agency prepared a justification and approval (J&A) for other than full and open competition for the Loral-Conic model 551 Rev. B FTRs. The J&A concluded that a sole-source award to Loral-Conic was justified under 10 U.S.C. § 2304(c)(1) (1988), which authorizes the use of other than competitive procedures when the items needed by the agency are available from only one responsible source or a limited number of responsible sources, and no other product will satisfy the agency's needs.

³On November 14, the agency synopsisized a requirement in the CBD for 1,020 "Rev. C" FTRs as an unrestricted procurement. Servo protested to our Office on November 25, arguing that

On November 22, the agency issued RFP No. N00163-92-R-0023, calling for a total of 186 Loral-Conic Rev. B FTRs. The RFP required the FTRs to be delivered at the rate of 20 units per month, with the first 20 units to be delivered within 90 days after contract award. Servo filed its protest prior to the December 24 closing date for receipt of initial proposals. On December 20, Servo submitted a proposal to the Navy providing for the delivery of the first 20 FTRs within 270 days after contract award, rather than within 90 days as required by the RFP. On January 6, 1992, the Navy rejected Servo's proposal because it took exception to the required delivery terms of the RFP.

PROTESTER'S CONTENTIONS

In its protest, Servo primarily challenged the delivery terms as unreasonably short, and alleged that only the contractor currently producing the FTRs--i.e., Loral-Conic--was capable of meeting the 90-day delivery schedule for the first 20 units. Servo argued that since the Navy has had an annual requirement for the FTRs since the "inception of the AN/AQM-37C target program," the sole-source award was not properly justified because it was the result of lack of advance planning on the part of the agency.

PREVIOUS FINDINGS AND CONCLUSION

As explained in our decision, in justifying the sole-source award, the J&A states that only Loral-Conic could provide the required FTRs within the required delivery schedule. The J&A further states that the required FTRs will be a government-furnished part under Beech Aircraft's contract for that firm to install in the AN/AQM-37C targets. Under its contract, Beech Aircraft is required to deliver to the government approximately 185 targets at the rate of about 9 targets per month, complete with FTRs, beginning in August 1992.⁴ Accordingly, we found the RFP's delivery schedule reasonable since the 90-day requirement for delivery of the initial FTRs will allow just enough time for the government to meet its contractual obligations with Beech Aircraft, and

the RFP for "Rev. C" FTRs should be set aside for small businesses. The protester subsequently withdrew its protest, and we closed our file (B-246774) on January 14, 1992, without issuing a decision.

⁴To assure the safe destruction of the targets in the event a mission is aborted, each target is equipped with a prime and a back-up FTR, and the agency estimates that some FTRs are recoverable from the targets following a mission. Accordingly, the agency requires only 186 FTRs to be used in connection with the targets Beech Aircraft will deliver.

therefore properly reflects the agency's minimum needs. See Microwave Radio Corp., B-227962, Sept. 21, 1987, 87-2 CPD ¶ 288 (the fact that a requirement may be burdensome or even impossible for a particular firm to meet does not make it objectionable where it properly reflects the agency's minimum needs). We also found that the record did not support Servo's assertion that the sole-source action resulted from the Navy's lack of advance planning.⁵

Based on our review of all of the submissions by the parties, we concluded that the record adequately supported the sole-source award to Loral-Conic for the limited quantity of FTRs involved here. Servo provided no evidence that it could furnish fully tested and qualified operational Rev. B FTRs within the agency's reasonable delivery schedule--in fact, Servo stated that it requires 9 months to provide a fully tested and qualified FTR. We therefore found reasonable the agency's determination that Loral-Conic is the only qualified source that can meet its requirements and that award to Loral-Conic would limit the possible unacceptable delays and costs to the government that might otherwise result from award to a firm that cannot propose a fully tested and qualified FTR within the time available. See, e.g., Kollsman, A Div. of Sequa Corp., Applied Data Tech., Inc., B-243113; B-243113.2, July 3, 1991, 91-2 CPD ¶ 18. Consequently, we found unobjectionable the sole-source award to Loral-Conic.

RECONSIDERATION REQUEST

In its reconsideration request, Servo continues to argue that the delays which ultimately caused the need for the sole-source procurement were the direct result of "lack of agency planning," and hence violated the statutory bar against limiting competition on such basis. See 10 U.S.C. § 2304(f)(5)(A); Honeycomb Co. of Am., B-225685, June 8, 1987, 87-1 CPD ¶ 579, aff'd, B-225685.2, Sept. 29, 1987, 87-2 CPD ¶ 313. In support of its theory that the agency improperly failed to adequately plan for this procurement, Servo submits that although the Navy had defined its requirement for the FTRs at issue here early on (as "delineated in [its] fiscal year 1991 (FY 91) budget"), the agency improperly waited until after the conclusion of FY 91 to initiate the procurement.

⁵Agencies may not justify the use of noncompetitive procedures on the basis of a lack of advance planning. 10 U.S.C. § 2304(f)(5); TeQcom, Inc., B-224664, Dec. 22, 1986, 86-2 CPD ¶ 700.

A party requesting reconsideration must show that our prior decision contains either errors of fact or law or that the protester has information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a) (1992). As explained below, Servo's repetition of arguments made during our consideration of the original protest does not meet this standard. R.E. Scherrer, Inc.-- Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

Contrary to the protester's implicit suggestion, there is nothing in the record to suggest that the agency deliberately or unduly delayed initiating the procurement so as to justify a sole-source procurement. Further, we do not think that the Navy's actions reflect a failure to adequately plan for competition. Rather, the sole-source award to Loral-Conic was due to unforeseen delays in a previously planned competitive procurement; scheduling pressures created by the agency's obligations under its contract with Beech Aircraft to provide that firm with the FTRs; and the unexpected availability of the Rev. C drawings. The Navy's efforts here all were related to procurement planning, and, as reflected in its initial CBD announcement, to fostering competition. The fact that due to unexpected events, the procurement did not proceed according to the agency's initial plan, does not render the resulting sole-source contract improper. See Rex Sys., Inc., B-239524, Sept. 5, 1990, 90-2 CPD ¶ 185.

The record shows that prior to September 1991, when the procurement was actually initiated, the agency fully anticipated conducting a competitive procurement.⁶ The initial September 20 CBD notice announced the unrestricted procurement for the Rev. B. FTRs and invited offers from all responsible sources that could meet the original 180-day delivery schedule. At that time, the agency considered three firms capable of providing the FTRs within the required delivery schedule. Subsequent to that announcement, when the drawings for the Rev. C FTRs unexpectedly became available, the agency canceled the

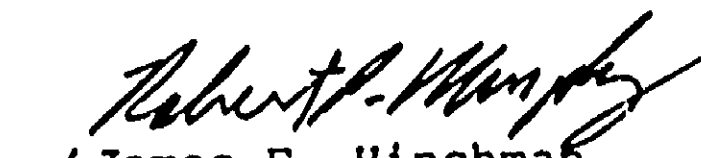
⁶Even if the agency had continued its procurement of a limited quantity of Rev. B FTRs under the delivery schedule originally announced in the September 20 CBD notice (i.e., first FTRs delivered within 180 days after award), since the protester required 9 months for initial delivery, Servo would not have been capable of supplying the FTRs within the time constraints of the original schedule. Servo's assertion on reconsideration that it was prepared to meet the July/August 1992, delivery schedule of the Rev. B FTRs had the agency proceeded under the September 20, 1991, CBD announcement is inconsistent with its prior representations to our Office.

announcement for the Rev. B FTRs, apparently without realizing that the new Rev. C FTRs would not be immediately available, and that it was required to provide a limited number of FTRs to Beech Aircraft to meet its obligations under the contract with that firm.

While the events described here may evidence ineffective communication between the requiring activity and contracting office, nothing in the record indicates that such events constitute a lack of advance planning warranting our sustaining the protest. Compare Service Contractors, B-243236, July 12, 1991, 91-2 CPD ¶ 49 (noncompetitive contract improperly awarded where agency's failure to commence selection process for replacement contract until 6 months after the incumbent's contract had expired was the result of a lack of advance planning). Contrary to the protester's suggestion, the agency clearly anticipated its requirement and initially contemplated conducting a competitive procurement for the Rev. B FTRs.

Finally, Servo asserts that our prior decision was flawed because this was not the "final buy" of the Rev. B FTRs. According to Servo, we should have therefore recommended that the agency ascertain its "real requirement" for Rev. B. FTRs, and award 2 contracts--one contract to Loral-Conic and one to Servo--each for 50 percent of the Navy's total requirement. The protester apparently misconstrues the basis for our decision. As already explained, our decision was based on a finding that the agency reasonably determined that only Loral-Conic could supply the Rev. B FTRs within the critical time constraints of the procurement. See Servo Corp. of Am., supra, at 6. Whether this procurement is actually a "final buy" of the Rev. B FTRs was not an issue in the protest or related to our conclusion.

The request for reconsideration is denied.


for James F. Hinchman
General Counsel